

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
NO. 3:05CV254-H**

WACHOVIA DEVELOPMENT CORP.,)
)
Plaintiff,)
)
vs.)
)
VILLAGIO APARTMENTS, LLC, et. al.,)
)
Defendants.)
)

ORDER OF DISMISSAL
FOR FAILURE TO PROSECUTE
FED. R. CIV. P. 4(m)

THIS MATTER is before the Court on its own Motion concerning the Plaintiff's failure to prosecute its claim.

On June 1, 2005, the Plaintiff filed its Complaint against the Defendants. On June 6, 2005, the Defendants were personally served with a Summons and copy of the Complaint. See "Return of Service" filed June 13, 2005. (document #6).

The Defendants have failed to file an Answer or otherwise respond to the Complaint, and as of the present date, the Plaintiff has taken no further action in prosecution of its claim against the Defendants.

On February 7, 2006, the Magistrate Judge to whom this case is assigned (the Honorable Carl Horn, III) issued an "Order to Show Cause" requiring the Plaintiff to "show cause why the Complaint should not be dismissed pursuant to Rule 4(m) of the Federal Rules of Civil Procedure for failure to prosecute this action." Document # 7 at 1. The Plaintiff's response was due on or before March 31, 2006, and Judge Horn warned the Plaintiff "that failure to make a timely response to this Order to Show Cause will result in **DISMISSAL** of this lawsuit." Id. (emphasis in original).

Despite this clear warning of the consequences to follow, the Plaintiff has failed to respond or otherwise make any showing why this case should not be dismissed.

NOW THEREFORE, IT IS ORDERED that pursuant to Rule 4(m) of the Federal Rules of Civil Procedure, this matter is **DISMISSED WITHOUT PREJUDICE**.

SO ORDERED.

Signed: December 12, 2006

A handwritten signature in black ink, appearing to read "Graham C. Mullen", written over a horizontal line.

Graham C. Mullen
United States District Judge

